## IN THE CIF.CUIT COURT OF JACKSON COUNTY, MISSOURI AT KANSAS CITY

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## FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER FOR HILLCREST BANK'S OPPOSITION TO PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT AND INCORPORATED SUGGESTIONS IN SUPPORT

COMES NOW Federal Deposit Insurance Corporation ("FDIC") in its capacity as Receiver for Hillcrest Bank, Overland Park, Kansas ("Hillcrest") and provides the following Opposition to Plaintiffs' Motion for Default Judgment and Incorporated Suggestions in Support:

## SUGGESTIONS IN SUPPORT

- 1. By order dated October 22, 2010, the Office of the State Banking Commissioner of Kansas closed Hillcrest and determined that FDIC would serve as receiver for Hillcrest.
- 2. On February 28, 2011, counsel representing the failed institution, Hillcrest, filed a motion to substitute FDIC ("Motion").
  - 3. On March 1, 2011, the Court granted Hillcrest's Motion ("March 1, 2011 Order").
- 4. On May 7, 2011, Plaintiffs filed a motion seeking relief from the March 1, 2011 Order, requesting that the Court vacate it based upon procedural deficiencies.
- 5. Plaintiffs' motion was granted on May 12, 2011 and the March 1, 2011 Order was vacated ("May 12, 2011 Order").
  - 6. Martin, Leigh, Laws & Fritzlen, P.C., and the undersigned counsel, were retained

by FDIC on May 23, 2011

- 7. Counsel filed their entry of appearance on May 24, 2011.
- 8. On May 25, 2011, Plaintiffs filed their Motion for Default Judgment against Hillcrest, a party that ceased to εxist upon the appointment of FDIC as its Receiver.
- 9. Based on the Appointment of FDIC as Receiver for Hillcrest, it has succeeded to all rights, titles, powers, and privileges of Hillcrest, including the present litigation. 12 U.S.C. § 1821(d)(2)(A)(i).
- 10. On May 27, 2011, FDIC filed its Motion to Substitute FDIC for Hillcrest which is currently pending before the Court.
- 11. FDIC as Receiver stands in the shoes of Hillcrest with respect to all matters, including the present litigation, as such, entry of a default judgment against the failed institution for which a receiver has been appointed is inappropriate.
- 12. Plaintiffs' motion for default fails to allege that it has complied with the mandatory administrative claims process pursuant to 12 U.S.C. § 821(d)(3)-(13) which would entitle them to pursue a claim against FDIC as Receiver in this action.
- 13. Until entry of an order substituting FDIC as Receiver for Hillcrest in this action, no answer is currently due and thus entry of a default judgment is unwarranted.

WHEREFORE, for the above and foregoing reasons, the Federal Deposit Insurance Corporation, in its capacity as Receiver for Hillcrest Bank, respectfully requests that the Court deny Plaintiffs' Motion for Default Judgment against Hillcrest Bank. A proposed order is attached for the Court's convenience.

Respectfully submitted,

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ATTORNEYS FOR FDIC

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was delivered via first class U.S. mail, postage prepaid, this 6th day of June 2011, to:

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